

January 25, 2016

VIA EMAIL

Supervisor Mick Gleason, County of Kern
Ala Christensen, County of Kern
Supervisor Matt Kingsley, County of Inyo
Bob Harrington, Ph. D, Inyo County Water department
Supervisor Robert Lovingood, County of San Bernardino
Ron Frame, County of San Bernardino
Bob Page, County of San Bernardino
Mayor Peggy Breeden, City of Ridgecrest
Director Peter E. Brown, Indian Wells Water District
Director Charles D. Griffin, Indian Wells Water District
Don Zdeba, Indian Wells Water District
Michael Stoner, U.S. Navy

Re: *Indian Wells Valley Groundwater Sustainability Agency*

To the Members of the Board of Supervisors for the County of Kern:

This letter is written on behalf of our clients, Meadowbrook Dairy and Meadowbrook Mutual Water Company ("Meadowbrook"). As one of the largest agricultural groundwater producers with overlying groundwater rights in the Indian Wells Valley ("Valley"), Meadowbrook has a vested interest in the long-term management of the Indian Wells Valley Groundwater Basin ("Basin").

Over the past several weeks, Meadowbrook has attended the hearings of several public agencies and working groups in the Valley regarding the implementation of the Sustainable Groundwater Management Act of 2014 ("SGMA"), and particularly the formation of a Groundwater Sustainability Agency ("GSA") for the Basin. Frequently heard comments suggest that there is uncertainty and confusion regarding the rights of private stakeholders like mutual water companies to fully participate in a GSA, including a GSA that is formed as a Joint Powers Authority ("JPA").

We remain optimistic that the SGMA process will ultimately yield an effective long-term Groundwater Sustainability Plan for the Basin, because the California legislature has recognized that only a broadly representative GSA will be successful and accomplish the statutorily mandated objectives.

In September 2015, California Senate Bill 13 ("SB 13") amended California *Water Code* Section 10723.6 (part of SGMA) specifically to provide that both water corporations regulated by the California Public Utilities Commission ("PUC") and mutual water companies are entitled to fully participate in the SGMA process as members of a GSA. At that time, Senator Pavley, who authored SB 13 as well as one of the three companion bills that comprise SGMA, wrote a letter to the Senate explaining the purpose and intent of SB 13. Her letter states, in part, that:

"[Water Code] Section 10723.6 (b) is intended to prevent local agencies from excluding PUC-regulated water corporations from an executive management role in a GSA, to give these regulated public water suppliers the authority necessary to fully participate in a GSA and to clarify that public agency approval is not necessary."

She continues:

"Indeed, for many years, the Sacramento Groundwater Authority has successfully managed groundwater resources in the region through a joint powers authority whose members have long included PUC-regulated water corporations."

The principles outlined by Senator Pavley apply equally to mutual water companies and PUC-regulated water corporations alike, as shown in the statutory text of SB 13, which treats both types of entities in the exact same way and removes language from *Water Code* Section 10723.6(b) that had previously required local agencies' approval. In fact, the Sacramento Groundwater Authority that Senator Pavley refers to is a JPA that includes both mutual water companies and private water users, as well as PUC-regulated water corporations, as voting members of its Board of Directors.

Notably, the Sacramento Groundwater Authority has already filed its Notice of Intent to Form a GSA and will be deemed the exclusive GSA for its area upon the close of business today. Other JPAs also exist that include mutual water companies with voting powers as board members.

In short, Senator Pavley clarifies that mutual water companies are eligible to hold

board member positions on a GSA formed through a JPA and that they do not require the permission of public agencies to do so. Both her letter and the structure of the Sacramento Groundwater Authority reflect “best practices” principles for managing groundwater. They are also consistent with the JPA law, including California *Government Code* Section 6525, which provides in relevant part that:

“(a) Notwithstanding any other provision of this chapter, a mutual water company may enter into a joint powers agreement with any public agency for the purpose of jointly exercising any power common to the contracting parties.

(c) For purposes of this section, “mutual water company” has the same meaning as the term does in Section 14300 of the Corporations Code.”

On behalf of Meadowbrook, we are concerned by the rapid pace at which Kern County is expressly determining whether to exclude all mutual water companies from holding board member positions on the GSA, as reflected in Agenda Item 23 and the accompanying resolution proposed for adoption at the Kern County Board of Supervisors’ Regular Meeting this Tuesday, January 26, 2016.

Kern County Counsel recently rejected our written request to participate in the GSA-formation meetings and conference calls being held exclusively among representatives of ostensibly “GSA-eligible” public entities. At the very least, counsel for each public agency, the large mutual water companies and other large private groundwater stakeholders in the Valley, must have a meaningful dialogue about the formation and structure of the GSA before any official action is taken in that regard.

We therefore urge the Kern County Board of Supervisors to refrain from adopting any resolution pertaining to the structure of the proposed Indian Wells Valley GSA until after those discussions have taken place. We likewise urge all public agencies seeking to participate in the GSA to engage in the same dialogue before adopting such resolutions or further directing staff regarding GSA matters.

As an eligible board member of any prospective Indian Wells Valley GSA, Meadowbrook Mutual Water Company is eager to join with the County and with

other truly GSA-eligible entities implementing SGMA for the Basin, beginning with the formation of a broadly representative GSA.

Very truly yours,



Mark A. Ostoich, of
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